Cri A 803/98

(107)

CF0000059487

(2)

DB (Cri)

S.T. No. 70/94

APPEAL PRISONER

No. 788 Name मडकाम नरसा

Father's Name लहुमैया Resident ग्राम - पुसबोन्टा
थाना - ~~उसूर~~, बस्तर

Age 40 वर्ष Sentenced to आजीवन कारावास on 11.9.97

Under Section 302 भा.द.वि. by माननीय तृतीय अति. सत्र न्यायालय जगदलपुर

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears If the legal practitioner does not appear within seven days he may be heard at all if legal practitioner the court may proceed at once with the case and will not be obliged to give a bearing to legal practitioner who should appear.

1. Date of application for copy of Judgement :- No.
2. Date of which copy received :- 11.9.97
3. Date on which appeal sent :- 18.9.97
4. Whether the prisoner wished to be represented or not :- Yes / ~~No.~~

No. 788 Name मडकाम नरसा S/o लहुमैया

Continued in जिला Jail जगदलपुर

No. 736/अल्टकोण Dated 18/9/97

Forwarded to the CHIEF JUDICIAL MAGISTRATE जगदलपुर "बस्तर"

together with a copy of Judgement or order passed in the case for favour of transmission to the proper Appleate Court.

Superintendent
Su perinten Dist. Cent. Jail Jagdalpur Jail.

Date of receipt in C. J. M. Office. 26/9/97 with 74 items

Date of receipt of record to accompany. 26/9/97

Memo of Appeal of the Appellate Court.

No. 460 dated 29/9/97

Forwarded to the H'ble Sessions Judge Jagdalpur

C. R. MAGISTRATE (महेश राठौर)
मुख्य न्यायिक मजिस्ट्रेट
जगदलपुर

Date of receipt in Appleate Court

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(21)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..C.R.A...803.|96 ~~सन् 200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

14-2-2007

Mr. R.K. Jain, counsel for the appellant.

Mr. Sudhir Bajpai, Deputy Govt. Advocate for the State/respondent.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo, J.: -

This appeal is directed against the judgment of conviction and order of sentence dated 11-9-1997 passed by the 3rd Additional Sessions Judge, Jagdalpur, in Sessions Trial No.70/94, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C. sentenced him to undergo imprisonment for life.

Case of the prosecution is that in the intervening night of 2nd & 3rd October, 1993 at about 12 mid night Muski Mara woke up and went to urinate, he saw that accused Madkam Narsa Muriya was tying calf near their bullock on which Muski Mara asked his father Muski Naga to wake up. Muski Naga said "who is there" on which the accused ran away leaving behind the calf. Naga called the villagers to apprise them about the act of the accused. When Muski Mara, Muski Naga, Ursa Hunga (PW-3) and Muski Shankarayya (PW-2) were coming towards the house of Muski Naga, Muski Mara (since

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

deceased) was ahead of all, the accused was coming in the same street carrying bow & arrow in his hand and he shot the arrow on Muski Mara which pierced into the chest of Muski Mara. Muski Mara immediately removed the arrow from his chest, fell down and succumbed to the injuries sustained by him instantaneously.

The matter was reported on 3rd October, 1993 by Muski Naga in Police Station: Usoor under Dehati Nalishi Ex.P-5, based on that Dehati Merg Ex.P-6 was prepared and the first information report was registered. The Investigating Officer took up investigation, left for the scene of occurrence and after giving notice to the Panchas, prepared the inquest Ex.P-7 on the body of Muski Mara. He prepared the site plan Ex.P-8. Blood stained soil, plain soil and arrow were taken into possession under Ex.P-9. The bow was also taken into possession under Ex.P-12. The body of Muski Mara was sent for post-mortem examination to Primary Health Centre, Ilemedi, where Dr. J.P. Sonkar (PW-1) conducted post-mortem, prepared the post-mortem report Ex.P-1 and opined that cause of death was haemorrhagic shock due to excessive interna bleeding by left lung. The death was homicidal in nature. The arrow was sent for examination by the doctor under Ex.P-14 and the doctor gave his opinion Ex.P-2 that the injury found on the body of Mara could be caused by the arrow in question.

After completion of investigation, charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Jagdalpur, who in turn committed the case to the Sessions Judge, Jagdalpur, from where, learned 3rd

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Additional Sessions Judge, Jagdalpur, received the case on transfer for trial.

The prosecution in order to establish charge against the accused examined five witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. The accused denied the material appearing against him in the prosecution evidence.

Learned Additional Sessions Judge after hearing the arguments of counsel for respective parties, convicted and sentenced the accused as aforementioned.

We have heard Mr. R.K. Jain, learned counsel for the appellant and Mr. Sudhir Bajpai, learned Deputy Govt. Advocate on behalf of the State/ respondent.

Mr. Jain has not disputed the homicidal death of Muski Mara. Moreover, from the evidence of Dr. J.P. Sonkar (PW-1) who has stated that there was a stab wound on the left side of the chest as a result of which left lung was punctured, injury was ante-mortem in nature and the death was homicidal in nature, as also from the evidence of Muski Shankarayya (PW-2), eyewitness, who has stated that the accused shot arrow on the chest of the deceased, it is established that the death of Muski Mara was homicidal in nature.

As far as involvement of the accused in the crime in question is concerned, Muski Shankarayya (PW-2) has stated in his evidence that on the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

fateful night when he was at residence, Hunga, Muski Naga, Muski Mara & Muski Lachhi came to his house, informed him that Madkam Narsa, the accused/appellant, has entered the house of Muski Naga and asked him to go with them and see. Muski Naga, Muski Mara, Hunga, Lachhi and this witness were going towards the house of Muski Naga, on the way Madkam Narsa shot arrow on Muski Mara which hit on the chest, as a result of which Muski Mara died on the spot. The matter was reported by Muski Naga, but unfortunately, before his evidence was recorded he expired.

Learned counsel for the appellant argued that in para 8 of the evidence of Muski Shankarayya (PW-2), he has stated that in the fateful night there was darkness, therefore it was not possible for him to identify the accused.

Perusal of para 8 of the evidence of this witness (PW-2) shows that he has simply stated that there was dark night, he has nowhere stated that in the night it was not possible for them to identify the accused. The first information report was lodged in the name of the accused and this witness has not been cross-examined further to show whether on the fateful night it was possible for any person to identify other persons or not. By simply saying that the night was dark, no inference can be drawn that darkness was to the extent that it was not possible for a person to identify another person standing nearby. Moreover, in para 15 of the judgment, the trial Court has held that on 2nd October, 1993, in the normal circumstances, after two hours of sunset, the moon should have risen at about 8 p.m. The

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	incident was of about 12 mid night, therefore, there was moon light. Even in the statement under Section 161 of the Cr.P.C., this witness has stated that there was moon light and on account of the passage of time, when his evidence was recorded, this witness might have forgotten about brightness of the moon in the night and inadvertently stated that there was dark night. Therefore, on the fateful night, there was moon light and moreover, as has been mentioned earlier there is no specific question to this witness that it was not possible for the persons to identify other persons. In the circumstances, we do not find any substance in the argument of learned counsel for the appellant. Therefore, in view of the evidence of Muski Shankarayya (PW-2), who is an independent witness and villager and that in cross-examination of this witness, defence has not been able to elicit any circumstance which discredits the evidence of this witness, we are of the considered opinion that the trial Court has not committed any illegality or infirmity in holding the accused guilty of offence under Section 302 of the I.P.C. Learned counsel for the appellant further argued that there is nothing on record to show that the accused shot arrow on the deceased with intention to cause death, as the incident was of night and there is no evidence that the accused shot arrow after pointing towards the chest of the deceased, by accident it might have hit on the chest of the deceased. In the circumstances, offence against the accused does not travel beyond Section 304 Part-II of the I.P.C.	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Mr. Sudhir Bajpai, learned Deputy Govt. Advocate supported the judgment of the trial Court.

In order to appreciate the arguments advanced by learned counsel for the parties, we have perused the evidence. As per the first information report and other evidence available on record, it is established that on the fateful night, in the first instance, at about 11 p.m. the accused came with calf, he was tying the calf near the bullock of the complainant, when deceased Muski Mara saw the accused there, he immediately asked his father to wake up and in the mean time, the accused ran away. Thereafter, deceased Muski Mara and his father went to call the villagers in order to apprise them about the act of the accused. The accused after making preparation having bow & arrow in his hand came and shot arrow at the deceased which directly hit on the left side of Muski Mara which pierced into the chest and punctured the left lung as a result of which there was excessive haemorrhage and Muski Mara died instantaneously. In cross-examination or otherwise, there is nothing on record which indicates that the accused without aiming at the chest of the deceased, in a heat of passion or otherwise, to inflict injury with an arrow on the deceased. The arrow hit on left side of the chest of the deceased and pierced up to lung as a result of which lung was punctured. The chest where the arrow was stuck is a vital part of the body and arrow itself is a very dangerous weapon, if it is shot with a little force, even then, it can pierce into the body at any

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

place and which in all possibilities is always fatal if it hits on any vital part of the body.

Therefore, the accused came with preparation carrying bow & arrow and he shot arrow on the chest of the deceased which resulted in instantaneous death of Muski Mara. In the circumstances, we do not find any substance in the argument of learned counsel for the appellant.

In the result, we do not find any illegality or infirmity in the judgment of the trial Court. The appeal has no merit, same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Soma

P.T.O.